IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10540 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE BANK OF INDIA

Versus

BHIKHABHAI NARHARSINH MAHIDA

Appearance:

1. Special Civil Application No. 10540 of 1994

MR PRANAV G DESAI for the Petitioner.

MR IS SUPEHIA for Respondent No. 1

NOTICE UNSERVED for Respondent No. 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 27/07/2001

ORAL JUDGEMENT

By means of this petition, the petitioner State Bank of India has sought for quashing and setting aside the award and order dated 18th April, 1994 passed

by the Industrial Tribunal (Central), Vadodara in Reference (Central II) No. 7 of 1991 and published on 25th May, 1994.

2. The petitioner appointed the respondent no. 1 as Farrash cum Messanger purely on temporary basis and he served for about 203 days from 30th November, 1981 to 31st March, 1983. The respondent was called for an interview and it was found that the respondent was over-aged at the time of initial appointment and so he could not be considered for permanent appointment in the bank in view of the Rule/policy of the petitioner bank. The bipartite agreement was signed between All India State Bank Staff Federation and the Bank on 17.11.1987 laying down terms and conditions subject to which temporary employees engaged by the bank were to be given chance for permanent absorption in the bank. The respondent vide his letter dated 5th April, 1988 raised an industrial dispute over his termination from service by the management of the State Bank of India, Vadodara with effect from 31st March, 1983. The Conciliation Officer reported on 1.5.91 about failure of the conciliation proceedings and so the Central Government referred the matter for adjudication to the Tribunal under section 10 of the Industrial Disputes Act. The Industrial Tribunal (Central), Vadodara passed the award dated 18.4.94 in Refernce (Cetnral II) 7 of 1994. By the said Award, the petitioner bank has been directed to reinstate the respondent no.1 in regular service of the bank as a messanger with effect from 1st January, 1990 with back wages and with a direction to the bank to calculate and pay arrears of back wages within a period of three months from the date of publication of the award. Therefore, being aggrieved by the said Award of the Industrial Tribunal (Central), Vadodara, the petitioner bank has filed this petition in this Court.

3. It is stated that the respondent no.1 worked for a period of 203 days from 30th October, 1981 to 31st March, 1983. The respondent no.1's employment automatically ceased by an efflux of time and on the expiry of the fixed period for which the appointment order was issued. The services of the respondent no. 1 were never terminated by the petitioner bank and the services came to an end automatically pursuant to the appointment letter and the respondent no.1 was appointed on purely temporary basis for a fixed and specific period. In the year 1985, the petitioner framed a policy to give an opportunity to the ex-temporary employees of the bank to those who had put in more than 90 days of service for being considered for permanent absorption of

the bank. The respondent no.1 was also called for an interview on 7.11.85. At the relevant time, the eligibility criteria was for consideration of the ex-temporary employees of the bank for permanent absorption in the bank and it was subject to the condition that the age of ex-temporary employees at the time of initial appointment must be between 18 to 24 years of age. Though the respondent no.1 was called for an interview on 7.11.1985, it was subsequently found that he was over-aged on the initial date of appointment i.e. 30th November, 1981 and due to over-age, the respondent no.1 could not be considered for permanent absorption in the bank as per the terms of the policy framed by the petitioner bank. On 17.11.1987, a bipartite settlement was arrived at and entered in between State Bank Staff Federation and the petitioner bank whereby the ex-temporary employees of the bank who were within 18 to 26 years of age at the time of their initial employment in service subject to fulfilment of other condtiions prescribed for the eligibility for being considered for permanent absorption in the bank. The respondent no.1 raised an industrial dispute over his termination from service with effect from 31st March, 1983. Conciliation proceedings were initiated by the Assistant Commissioner of Labour (Central-II), Ahmedabad. It was pointed out to the Assistant Commissioner of Labour that the workman would not be eligible for being considered for permanent absorption in the bank in view of the relaxation in the age limits as laid down by bipartite settlement dated 17.11.87, the respondent no.1 was called for an interview on 20th November, 1989. By the bipartite settlement, only a chance was to be given to all ex-temporary employees for being considered for permanent absorption in the bank. But no guarantee or no commitment was given under the bipartite settlement that all the temporary employees who were given a chance for being considered would be positively permanently absorbed in the petitioner bank. The proceedings before Assistant Commissioner of Labour had failed on 5.1.1991. On the failure of the conciliation proceedings, the Ministry of Labour, Government of India referred vide order dated 16.8.1991 the following issue for adjudication to the Industrial Tribunal.

"Whether the action of the management of State Bank of India, Regional Office, Vadodara, in terminating the services of Shri B N Mahida is legal and justified ? If not, to what relief the workman is entitled ?"

4. The petitioner filed his statement of claim before the Tribunal and it was stated that the

respondent no.1 is not entitled to the relief in the facts and circumstances. The Tribunal recorded a finding that the action of the petitioner bank in not regularising the services of the respondent no.1 does not amount to termination or retrenchment. However, the action of the petitioner bank in not declaring the result of the interview held on 19th October, 1987 is illegal and unjust. Hence, the Tribunal granted relief in favour of the respondent no.1 directing the reinstatement of the respondent no.1 in service with effect from 1.1.1990. It is also stated that after conducting the interview, wait list of all the ex-temporary employees was prepared and those employees were given a chance for permanent absorption in the bank. In that list, the respondent no.1 finds place at serial no.17. The bipartite settlement dated 17.11.1987 was subsequently modified by another bipartite settlement dated 27th October, 1988 and 9th January, 1991. It is stated that the wait list prepared by the petitioner was valid till December, 1994. Subject to availability of the vacancies arising as well as subject to validity of the waiting list the respondent no. 1 could be absorbed permanently in the bank. The workman has no legal right to be appointed in the bank having not worked for 240 days in any period of 12 months. The Tribunal has travelled beyond its jurisdiction and has erred in holding that the respondent no.1 is entitled for reinstatement with back wages with effect from 1.1.1990. Hence, being aggrieved by the award of the Tribunal, the petitioner bank has filed the present petition.

5. One affidavit-in-reply has been filed by Shirish Shantaram Pradhan, stating therein that the respondent no.1 was interviewed in October, 1989 in terms of the bipartite settlement dated 17.11.1987 and the respondent no.1 finds place in the waiting list at serial no.17. All the ex-temporary employees were considered for permanent appointment in the petitioner bank in terms of the bipartite settlement as per para-1 were offered part-time appointment and not full time appointment strictly in order of merit, as per the waiting list prepared on the basis of the interview. Four candidates including the respondent no.1 in the waiting list were to be offered permanent part-time appointment on 14th November, 1994. The appointments of the remaining three candidates were released on 14.11.1994. The appointment of respondent no.1 was kept in abeyance which was released on 9th January, 1995 after the order dated 15.12.1994. The respondent no.1 was offered permanent appointment as waterman cum sweeper on 3/4th salary payable to full time subordinate staff of the bank at

Bodeli branch in Vadodara district where the vacancy existed. This court made an observation that if the workman is otherwise entitled to be appointed as per the list prepared and if he is otherwise qualified, he shall be appointed. The respondent no.1 did not accept the said offer of the petitioner bank of the permanent part-time Watchman cum sweeper and informed the bank about the same by his letter dated 23.1.1995.

6. The main contention of the learned counsel for the petitioner bank is that the dispute which was referred to the Tribunal for adjudication was as to whether the action of the management of the State Bank of India in terminating the services of B.N.Mahida is legal and justified and if not, to what relief the workman is entitled to. The Tribunal has travelled beyond its jurisdiction and having recorded the finding that the respondent no.1 has served for a period of 203 days, the petitioner was not retrenched nor he was terminated. The Tribunal has gone beyond the jurisdiction by holding that the respondent no.1 was entitled for reinstatement in the regular service of the bank as a messanger with effect from 1.1.90 on the ground that one Mahendra Pandya whose birth date was 28th July, 1987 and who was also appointed temporary as a messanger about one month after the respondent no.1 has been regularised in service though he had completed 24 years on the date of his appointment. Secondly, the petitioner would have declared the result within a reasonable time upto 1.1.90. Withholding of the result for unjustified reason entitled the respondent no.1 to be reinstated with effect from 1.1.90 with back wages and it is also considered that the respondent no.1 fulfils all other requirements for being regularised in the service as he had not completed 25 years on the date of his appointment. Thirdly he was a non-matric and he put in 90 days temporary service in the bank. According to the statement of witnesse in the chief-examination, the requirements for absorption of a person in permanent service of the bank were fully complied with.

7. The matter of regularisation of Mahendra Pandya was not in issue which has been considered by the Tribunal and the result of the interview was not declared was also not a issue for adjudication. Therefore, the Tribunal has exceeded its jurisdiction. Hence, the award is not maintainable in the eye of law. In this connection, he relied on the judgment of the Supreme Court in the case of Pottery Mazdoor Panchayat vs. The Perfect Pottery Co. Ltd. and another vs. The Perfect Pottery Co. Ltd. and another reported in AIR 1979, SC, 1356 wherein it has been held as under :

" ....The reference being limited to the narrow question as to whether the closure was proper and justified, the Tribunals by the very terms of the reference, had no jurisdiction to go behind the fact of closure and inquire into the question whether the business was in fact closed down by the management."

He also placed reliance in the judgment of the Supreme Court in the case of M/s. Firestone Tyre and Rubber Co. of India (P) Ltd. vs. The Workmen Employed represented by Firestone Tyre Employees' Union reported in AIR 1981, SC, 1626 wherein it has been held as under:

"The fairness of subsequent absorption of some workmen is a matter quite irrelevant for judging the validity of the earlier dismissal of these workmen alongwith others, it is an entirely separate and independent question. The Tribunal also did not frame an issue on the alleged discrimination. That being so, we think the Tribunal travelled outside its jurisdiction in recording a finding of unfair labour practice and discrimination."

He also relied on the decision of the Supreme Court in the case of The Delhi Cloth and Geenral Mills Co. Ltd. vs. The Workmen and others reported in AIR 1970, SC, 919 in which it has been held as under:

" 16. There is another objection to the consideration of this claim made on behalf of the employers. By the express terms of reference the Tribunal is called upon to adjudicate on the question of fixation of gratuity; there is no reference either expressly or by implication to the fixation of the age of superannuation and in the absence of any reference relating to the fixation of the age of superannuation, the Tribunal was not competent to fix the age of superannuation. A gratuity scheme may, in our judgment, be implemented even without fixing the age of superannuation. The gratuity scheme in operation in the D.C.M. and S.B.M. has been effectively in operation without any age of superannuation for the workmen in the two units. An inquiry into the question of fixing the age of superannuation did not arise out of the terms of reference. No such claim was made by the workmen and even in the written statement filed by the employers no direct reference was made to the fixation of the age of superannuation, nor was

there any place that before framing a gratuity scheme the Tribunal should provide for the age of superannuation. We agree with the Tribunal that fixation of the age of superannuationn was not incidental to the framing of the gratuity, scheme and it was neither necessary nor desirable that it should be fixed."

8. On the contrary, the learned counsel for the respondent no.1 contended that the Tribunal has framed the following issues:

(1) Whether the action of the opponent bank in not regularising the service of the applicant amounts to termination or retrenchment ?
(2) Whether the action of the opponent bank in not declaring the result of the interview of the applicant held in October, 1989 is illegal and unjustified ?

On the basis of these issues having been framed by the Tribunal, the Tribunal has decided the fact regarding regularisation of the services of the applicant and non-declaration of the result of the interview and its effect. As the Tribunal has adjudicated after framing the issues, the Tribunal cannot be said to have exceeded its jurisdiction in recording the finding on the issued framed by it. He also relied on the decision of the Supreme Court dated 11th January, 1979 in the case of M/s. Agra Electric Supply Company Ltd., Agra and Workmen in Civil Appeal nos. 1921 and 1922 of 1973 in which it is held that when the reference is comprehensive enough to cover both these concepts, it is within the jurisdiction of the Tribunal to investigate into whether the retirement is legal and, if legal, whether it is also justified. There is end of the matter in the but in the industrial law the rigid rules of contract do not govern the situation and an amount of flexibility in the exercise of powes taking liberties with the strict rights of parties is permitted to Tribunals.

9. I have considered the contentions of the learned counsel for the parties and perused the relevant papers on record. The Tribunal has directed the reinstatement of the respondent no.1 in regular services of the bank as a messanger with effect from 1.1.1990 with back wages. On the basis of the fact that one Mahendra Pandya has been regularised in the service though he had completed 24 years on the date of his appointment, he

being a junior to the respondent no.1 has been regularised. Secondly, the respondent no.1 was called for interview and the petitioner bank has not declared the result within a reasonable time upto 1.1.90 and the respondent no.1 fulfils all requirements for being regularised in service. Now, the question is as to whether regularisation of service or absorption was to be adjudicated by the Tribunal as it appears from the issue referred to the Tribunal. The question referred was only regarding termination of the services of the respondent no.1. The question of regularisation was not referred for adjudication to the Tribunal. If the matter was not referred, the question of regularisation could not have been determined by the Tribunal only on the ground that one Mahendra Pandya being junior to the petitioner was regularised. The Division Bench of this Court in the judgment dated 6th February, 2001 in LPA No. 435 of 1999 has observed as under:

" The applicant was not in continuous service. He worked only for 203 days and the aforesaid finding is recorded. So far as other issues are concerned, the Tribunal has proceeded on the basis that the Bank ought to have declared the result within a reasonable time i.e. upto 1.1.90 and since the Bank withheld the result for unjustified reasons, the applicant is entitled to be reinstated in service with effect from 1.1.90 with back wages. It seems that the Tribunal has not considered the settlement arrived between the parties under section 2(P) of the Act. The Tribunal has considered the case of one Mahendra Pandya who was appointed temporarily as a messanger about one month after the applicant was appointed and has been regularised in service though he had completed 24 years on the date of his first appointment. The Tribunal has not bothered to verify whether workman has completed more than 240 days or not. In a given circumstance, if a workman has completed 240 days he may stand on a stronger footing than the workman who might have been engaged earlier but who may not have completed 240 days. That apart, the Tribunal ought to have called upon the Bank to explain as to why the result was not declared; whether he failed in the test or not was the real question to be posed. The Tribunal has not done that."

10. In view of the above discussion, I am of the opinion that the Tribunal has exceeded its

jurisdiction and more particularly when the Tribunal has recorded a finding that the applicant (respondent no.1 has worked only for 203 days and by no stretch of imagination, it can be said that the respondent no.1 was ever retrenched. Therefoe, this was not a case of retrenchment either. Once, it is held that the respondent no.1 was not retrenched or terminated, and his services were for less than required period, the Tribunal was not justified in ordering the reinstatement of the respondent no.1 in regular services of the bank with effect from 1.1.1990 with back wages. The question of regularisation was also not referred to the Tribunal for its adjudication. Still however, the Tribunal has recorded a finding that on the basis of the regularisation of one Mahendra Pandya, the respondent no.1 is also entitled for reinstatement in service of the bank. If the respondent no.1 has refused to accept the offer made by the petitioner, the offer of appointment shall be deemed to have been withdrawn or cancelled and is therefore, his name for permanent appointment cannot not be considered in future.

11. In the present case, this Court made attempts for the absorption of the respondent no.1 on part-time post, but the respondent no.1 has refused to accept the suggestion made by this Court. Thus, in the facts and circumstances, this petition deserves to be allowed. Accordingly, this petition is allowed. The impugned Award and order dated 18th April, 1994 and published on 25th May, 1994 in Reference (Central II) NO. 7 of 1991 passed by the Industrial Tribunal (Central), Vadodara is hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs.

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